

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11573-RWZ

ANTHONY P. SCAPICCHIO, M.D.,)
Plaintiff,)
)
v.)
)
MOUNT AUBURN PROFESSIONAL)
SERVICES, a Massachusetts non-)
profit corporation, MOUNT AUBURN)
HOSPITAL, a hospital incorporated)
in Massachusetts, for itself and as)
administrator of the Mount Auburn)
Hospital RetirementPlus 403(b))
Plan, and THOMAS FABIANO,)
Defendants.)

**OPPOSITION OF PLAINTIFF ANTHONY P. SCAPICCHIO, M.D. TO THE
DEFENDANTS' MOTION TO STRIKE CERTAIN PARAGRAPHS OF THE
AFFIDAVIT OF ANTHONY P. SCAPICCHIO**

Now comes the Plaintiff, Anthony P. Scapicchio, M.D., and submits this opposition to the Defendants' motion to strike certain paragraphs of the affidavit of Anthony P. Scapicchio, M.D. The affidavit at issue was signed and filed by Dr. Scapicchio in support of his motion for summary judgment, which he filed with this Court on January 21, 2005.

The Defendants' motion to strike alleges that paragraphs 9 and 10 of Dr. Scapicchio's affidavit should be stricken as irrelevant. The Defendants' position regarding these two paragraphs is without merit because, without limitation, a full and objective interpretation of the motion for summary judgment filed by Dr. Scapicchio establishes that both Dr. Scapicchio's involvement in developing the Retirement Plan and

the intent of the Retirement Plan are highly relevant to the claims now being asserted by Dr. Scapicchio in this litigation.

Similarly, the Defendants' request to strike paragraphs 13, 19, 20, 21, 22, 23, and 24 of Dr. Scapicchio's affidavit is also misplaced, because those paragraphs also recite facts that are highly relevant to the arguments proffered by Dr. Scapicchio in his motion for summary judgment. While the Defendants are entitled to dispute the factual accuracy of the identified paragraphs and to contest the legal ramifications of the facts set forth in the identified paragraphs, the Defendants are not entitled to have the paragraphs stricken simply because the Defendants do not agree with the facts recited therein and/or the alleged legal ramifications of said facts.

Wherefore, Plaintiff Anthony P. Scapicchio respectfully requests this Court to deny the Defendants' motion to strike certain paragraphs of the affidavit of Anthony P. Scapicchio, M.D., in its entirety.

Respectfully submitted,

ANTHONY P. SCAPICCHIO, M.D.

By his attorney,

/s/ John S. Day

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Date: February 18, 2005

CERTIFICATE OF SERVICE

I, John S. Day, hereby certify that on the 18th day of February, 2005, I caused a copy of the foregoing to be served, by electronic filing, upon Philip M. Cronin, Peabody & Arnold, 30 Rows Wharf, 6th Floor, Boston, Massachusetts 02110.

/s/ John S. Day

John S. Day